

-7-

REMARKS

In response to the Office Action mailed on July 5, 2006, Applicant respectfully request reconsideration. Claims 43-45 have been added. Claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 25-26, 30-32, 35-37 and 40-45 are now pending in this Application. Claims 1, 11, 21 and 31 are independent claims and the remaining claims are dependent claims. The claims have not been amended and are included above for the Examiner's convenience. Applicant believes that the claim as presented are in condition for allowance. A notice to this affect is respectfully requested.

The Examiner rejected claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 25-26, 30-32, 35-37 and 40-42 under 35 U.S.C. §1023(e) as being anticipated by U.S. Patent No. 6,647,257 to Owensby (hereinafter Owensby). Applicant respectfully disagrees with these contentions and asserts that the present claimed invention is not anticipated by any disclosure in the Owensby references.

Owensby discloses a system and method for providing targeted messages based on wireless mobile location. In the rejection of claim 1 the Examiner stated that Owensby discloses the elements of claim 1 in figures 1 and 2 and at column 19, lines 5-18; column 22 lines 35-55; and column 18, lines 58-67. Applications respectfully disagree with the Examiner's statement.

Claim 1 recites in part: an audio streaming server providing an audio stream; a client including a buffer storing at least portions of said audio stream received from said audio streaming server; a buffer status sensor operative to monitor the contents of said buffer said buffer status sensor comprising an audio sampler sampling portions of said audio stream, wherein said audio sampler is voice command responsive. A review of Owensby fails to disclose or suggest these elements of claim 1. The Examiner failed to indicate what he correlates the different elements of claim 1 to in the Owensby reference. It is not clear which element(s) in Owensby is similar to the audio streaming server of claim 1. Is it the candidate discriminator module, the Ad selection Code generator, the Switch control, or a combination thereof. Similarly, what in

Owensby correlates to the client including a buffer, a buffer status sensor, and the audio sampler.

Claim 1 further recites: a client audio output enhancer operative in response to an output from said buffer status sensor for providing a modified audio stream output including inserted pre-recorded informational audio segments which were not received from said audio streaming server. The Examiner stated that this is shown in Owensby at column 19-20 in lines 10-67. Again the Examiner has failed to provide any correlation between the elements of Owensby and the client audio enhancer and the audio streaming server. If the Examiner is to maintain this rejection he is asked to point out with particularity where in Owensby the elements of the claims are disclosed or suggested.

In general Owensby determines a call is being received and injects an advertisement **before** the call is connected to the dialed party (column 19, lines 10-18). Claim 1 recites a modified audio stream comprising an audio stream including inserted audio segments. Thus, in claim 1 an audio stream has audio segments inserted therein, whereas in Owensby, a separate audio stream is played to the user prior to connecting the user to a dialed party. Accordingly, claim 1 is believed allowable over Owensby. Claims 11, 21 and 31 contain similar language as claim 1 and are also believed allowable for the same reasons. Claims 5-6, 8, 10, 15-16, 18, 20, 22, 25-27, 32, 35-37 and 40-42 depend from claims 1, 11, 21 or 31 and are believed allowable as they depend from a base claim which is believed allowable.

Claims 43-45 have been added. Support for these claims can be found in the specification as filed at page 8, lines 7-15. Applicants submit that no new matter has been added and that claim s43-45 are not disclosed or suggested by the prior art of record.

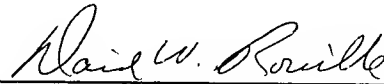
In view of the above the Examiner's rejections are believed to have been overcome placing claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 25-26, 30-32, 35-37 and 40-42 in condition for allowance and reconsideration and allowance thereof is respectfully requested.

-9-

Applicant hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,



David W. Rouille, Esq.
Attorney for Applicant
Registration No.: 40,150
Chapin Intellectual Property Law, LLC
Westborough Office Park
1700 West Park Drive
Westborough, Massachusetts 01581
Telephone: (508) 616-9660
Facsimile: (508) 616-9661

Attorney Docket No.: NMS03-14

Dated: November 3, 2006